92-1335

NO.

Supreme Court, U.S.
FILED
FEB 8 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JEAN F. (KINGHAM) MONA

Petitioner

versus

CITIZENS BANK AND TRUST COMPANY OF MARYLAND; A. LEE HAISLIP, JR., Esquire, as agent of Peoples Security Bank of Maryland and Citizens Bank and Trust Company of Maryland and as agent of Ticor Title Insurance company; A. LEE HAISLIP, JR., Esquire; DANIEL J. GILLESPIE, Individually, and as Employee or Officer of Citizens Bank and Trust Company of Maryland; TICOR TITLE INSURANCE COMPANY

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals err in declining jurisdiction to review a grant of abstention by the District Court under 28 USC section 1334(c)(2) for compliance of such grant with the statutory requirements?

II. Did the Court of Appeals err in finding appropriate the grant by the District Court of abstention under 28 USC section 1334(c)(2) in a core matter?

III. Did the Court of Appeals err in failing to consider the absence of an available state forum in which the merits could be heard, in deciding the question of abstention under both 28 USC section 1334(c)(1) and (c)(2)?

IV. Did the Court of Appeals err in failing to consider the issue of whether the mandatory bankruptcy stay (11 USC section 362(a)) precluded a state-court judgment from becoming final when that would have been review of a decision to abstain under 28 USC section 1334(c)(1)?

LIST OF PARTIES

The parties to this proceeding are all listed in the caption of this case.

Plaintiffs JOSEPH F. MONA and MATTHEW J. KINGHAM were dismissed by the bankruptcy court below and are not parties to this appeal.

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Mona v. Citizens Bank and Trust Co. of Maryland, No. 92-2093, Corrected Order of the Court of Appeals of November 18, 1992

JURISDICTIONAL GROUNDS

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on November 10, 1992, corrected order November 18, 1992. This Court has jurisdiction to review this matter pursuant to 28 U.S.C. section 1254.

STATUTORY PROVISIONS

11 U.S.C. Section 362(a)

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, or a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title.

(3) any act to obtain possession of property of the estate or of property from the estate or to

exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

28 U.S.C. Section 157

(b)(2) Core proceedings include, but are not limited to--

(A) matters concerning the administration of the estate;

(B) Allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced and can be timely adjudicated in a State forum of

appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362(a) of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

STATEMENT OF THE CASE

In 1983, Petitioner was a party to certain transactions involving real property situated in Prince George's County, Maryland. These transactions culminated in (among other things) a judgment for Citizens Bank and Trust Company of Maryland (Citizens) against petitioner on a cognovit note on June 27, 1986. On July 10, 1986, before that judgment became final, petitioner filed bankruptcy under Chapter 11 in the Bankruptcy Court, D Maryland (Rockville).

On January 26, 1988, petitioner, as a bankrupt, under 11 U.S.C. sections 704 and 1106(a)(1) and 28 U.S.C. sections 1331, 1334 and 1409 sued Citizens, Daniel J. Gillespie (an agent of Citizens), TICOR, and A. Lee Haislip on various claims in U.S. District Court, Maryland. As Citizens had previously filed two proofs of claim against the bankruptcy estate of the petitioner, the claims against Citizens and Gillespie were core claims. The claims against TICOR and Haislip were noncore claims.

Defendants, in response to petitioner's suit against them, moved for abstention by the District Court under 28 U.S.C. Section 1334(c)(1) or (c)(2). On September 19, 1988, the District Court

(Kaufman, Judge) held a hearing on defendants' motions, and referred the case to the Bankruptcy Court, D Maryland (Rockville), which held its own hearing in chambers (Mannes, Judge) on January 25, 1989. At the latter hearing, all parties agreed to the filing of the same case (absent those aspects particular to the bankruptcy) in the Circuit Court for Prince George's County, Maryland. Petitioners did so file, and all defendants raised the defense of Limitations. The trial court upheld this defense (December 1989), and was affirmed by the Maryland Court of Special Appeals (October 1990). *Certiorari* was granted by the Maryland Court of Appeals, and withdrawn after oral argument as having been improvidently granted (May 1991).

On May 4, 1990, in the Bankruptcy Court, Judge Mannes had issued an order noting that, since the matter had been dismissed by the circuit court for Prince George's County upon a plea of limitations, the plaintiffs were left with no choice of forum other than the United States District Court for the District of Maryland, and by reference the United States Bankruptcy Court for the District of Maryland, and set a hearing on outstanding motions.

In August 1990, as a result of this collateral

proceeding in the Bankruptcy Court, D Maryland (Rockville), the Bankruptcy Court (Mannes, Judge) recommended withdrawal of the decree of reference, which the District Court (Kaufman, Judge) subsequently did, staying any further action pending resolution of the state-court proceedings.

Subsequent to the withdrawal by the Maryland Court of Appeals of its grant of *certiorari* in May, 1991, the District Court, D Maryland (Kaufman, Judge), requested briefing of several stated questions, and set a hearing for June 5, 1992, at which it announced its decision to abstain entirely, "pursuant to the provisions of 28 U.S.C. section 1334(c)(1) and/or section 1334(c)(2) and entering judgment against all plaintiffs," with its written opinion appearing on August 5, 1992, and reported at 143 B.R. 375 (1991).

Petitioner appealed to the U.S. Court of Appeals, 4th Circuit, in a timely manner. Petitioner's appeals were dismissed November 10, 1992, on motions of appellees who cited the provision within 28 USC section 1334(c)(2) precluding review "by appeal or otherwise" of "[a]ny decision to abstain made under this subsection" as the basis for their claim that the Court of Appeals did not have subject-matter

jurisdiction to hear petitioner's appeal. The Court of Appeals granted appellees' motions without comment, and dismissed petitioner's appeal. It is from this dismissal that petitioner here seeks a writ of *certiorari*.

ARGUMENT

I.

Did the Court of Appeals err in declining jurisdiction to review a grant of abstention by the District Court under 28 USC section 1334(c)(2) for compliance of such grant with the statutory requirements:

The most important aspects of this question are:

(a) May a decision by the District Court to abstain or not to abstain under 28 USC section 1334(c)(2) be reviewed for its compliance with statutory requirements? and

(b) There presently appears to exist a conflict between the circuits on this question.

For any decision by the District Court to abstain or not to abstain under 28 USC section 1334(c)(2), there is a distinction between review of that decision as to its merits, and review for its compliance with statutory requirements. The statutory requirements for granting or denying abstention under 28 USC section 1334(c)(2) determine the jurisdiction to grant or to deny. If the District Court were not to comply with the statutory requirements it will have exceeded its jurisdiction, as its power to abstain or not to

abstain in a bankruptcy case is explicitly derived from the statute. Thus, whether the District Court correctly decided the question of core or non-core (determining whether abstention would be under section 1334(c)(1) or (c)(2), and whether the other requirements for abstaining or not under section 1334 (c)(2) were satisfied, would be subject to review. Absent review for compliance of the District Court's decision with statutory requirements for abstention under section 1334 (c)(2), the District Court would be able to dispose of any case it chose, even a non-bankruptcy case, by abstention under section 1334 (c)(2), and nothing could be done about it.

A conflict appears to exist between the Second and Fourth Circuits on this question. The Second Circuit has held that abstention by the District Court under section 1334(c)(2) was subject to review for compliance with statutory requirements. *Ben Cooper, Inc. v. Insurance Co. of Pa. (In re Ben Cooper, Inc.)*, 896 F.2d 1394 (2d Cir.), *cert. granted*, --- U.S. ---, 110 S.Ct. 3269, 111 L.Ed.2d 779, *vacated and remanded*, --- U.S. ---, 111 S.Ct. 425, 112 L.Ed.2d 408 (1990), *reinstated*, 924 F.2d 36 (2d Cir.), *cert. denied*, --- U.S. ---, 111 S.Ct. 2041, 114 L.Ed.2d 126 (1991).

In the instant case, the Fourth Circuit appears to have held the opposite: that abstention under section 1334(c)(2) is not reviewable for compliance with statutory requirements. This question will reoccur in other bankruptcy cases.

II.

Did the Court of Appeals err in finding appropriate the grant by the District Court of abstention under 28 USC section 1334(c)(2) in a core matter:

The Fourth Circuit committed a mistake of law in failing to take jurisdiction to review the District Court's grant of abstention under 28 USC section 1334(c)(2), because the District Court so abstained with regard to a core matter, for which abstention under section 1334(c)(2) is unavailable by statute.

> As a question of law, we reviewed de novo the District Court's determination that the proceeding is non-core.

Ben Cooper, 896 F.2d 1394 at 1397.

III.

Did the Court of Appeals err in failing to consider the absence of an available state forum in

which the merits could be heard, in deciding the question of abstention under both 28 USC section 1334(c)(1) and/or (c)(2)?

The Fourth Circuit committed a mistake of law by failing to take jurisdiction and allowing to stand the District Court's grant of abstention under 28 USC section 1334(c)(1) and/or (c)(2), in that no state forum was available for hearing of the merits of the instant case, contrary to the statutory requirements for sections 1334(c)(1) and (c)(2). Section 1334 (c)(1) recites, as a requirement for abstention, "in the interest of justice, or in the interest of comity with State courts or respect for state law;" without an available state forum, there can be no comity with a state court, and "respect for state law" is only an empty phrase. Section 1334 (c)(2) recites, as a requirement for abstention, that "an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction." Timely adjudication in a state forum is impossible without an available state forum.

Therefore, abstention by the District Court, under either section 1334(c)(1) or section 1334 (c)(2) necessarily involves the failure of the District Court to comply with the statutory

requirements for either type of abstention. By failing to comply with statutory requirements, the District Court exceeded its jurisdiction. The Court of Appeals, in not considering the absence of available state forum for hearing of the merits, allowed this excess by the District Court to go unchecked, and so erred.

IV.

Did the Court of Appeals err in failing to grant jurisdiction to consider the issue of whether the automatic bankruptcy stay (11 USC section 362(a)) precluded a state-court judgment from becoming final when that would have been review of a decision to abstain under 28 USC section 1334(c)(1)?

This question appears to involve a conflict between the circuits.

The Fourth Circuit committed a mistake of law in failing to consider the issue of whether the automatic bankruptcy stay, under 11 USC section 362(a)(1),

> ...the commencement or continuation, including the issuance or employment of process, or a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to

> recover a claim against the debtor that arose before the commencement of the case under this title;

precluded a state-court judgment, not yet final at time of bankruptcy filing by petitioner, from becoming final. The District Court had ruled that

> even if this Court were to determine that any claim or any counterclaim involving the [bankruptcy estate] is a core matter, that determination would not afford [petitioner] any relief... because the entry of judgment on the cognovit note was a final judgment...,

Mona v. Citizens Bank and Trust Co. of Maryland, 143 B.R. 375, 382(D Md., 1992). In fact, petitioner filed bankruptcy on July 10, 1986 while the judgment on the cognovit note, which had been granted June 27, 1986, was still appealable (and that judgment has never become final).

This case was filed in the United States District Court for the District of Maryland on January 26, 1988.

The Fourth Circuit erred as a matter of law in failing to consider the issue of whether the automatic bankruptcy stay precluded a state-court judgment from becoming final. The state-court judgment to which the stay pertains involves a core matter, for which abstention is available only

under section 1334(c)(1). Abstention under section 1334 (c)(1) has been held to be reviewable. In *Ben Cooper, Coker v. Pan American World Airways, Inc. (In re Pan American Corp.,)* 950 F.2d 839 (2nd Cir. 1991), following *Ben Cooper*; and *Arnold Print Works, Inc. v. Apkin (In re Arnold Print Works, Inc.)*, 815 F.2d 165 (1st Cir. 1987). In opposition to both the First and Second Circuits, the Fourth Circuit appears, in the instant case, to have failed to take jurisdiction to review the abstention decision of the District Court to abstain in a core matter which must be a 1334(c)(1) abstention.

CONCLUSION

It is manifestly clear that the Circuit Court of Appeals had jurisdiction to review all aspects of section 1334(c)(1) abstention including the finality of judgment on the cognovit note. It should be clear that the Circuit Court of Appeals had jurisdiction to review section 1334(c)(2) abstention for compliance with statutory requirements.

The Fourth Circuit Court of Appeals failed to exercise such jurisdiction.

The Fourth Circuit Court of Appeals appears to be in conflict with the First and Second Circuits. The question of the extent of review allowed in Abstention cases will reoccur. Therefore the Writ of Certiorari should be granted.

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UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF MARYLAND AT ROCKVILLE

IN RE:	) Case No. 86-4-1568-PM
JEAN MONA	) Chapter 11
Debtor	)
	)
JEAN F. MONA,	) Civil No. K88-209
JOSEPH F. MONA	)
MATTHEW J. KINGHAM	) Adversary No. 90-A-
Plaintiffs	) 0052-PM
vs.	)
CITIZENS BANK AND	)
TRUST COMPANY OF	)
MARYLAND, TICOR	)
TITLE INSURANCE	)
COMPANY, DANIEL J.	)
GILLESPIE, A. LEE	)
HAISLIP, JR.	)
Defendants	)

ORDER TO CLERK ON PROCESSING REFERRED CASE AND SETTING HEARING ON MOTIONS TO DISMISS

This complaint, originally filed in the United States District Court in the District of Maryland,

on January 26, 1988, came before the Honorable Frank A. Kaufman, United States District Judge, on September 19, 1988, on motions to dismiss filed by defendants. At the conclusion of that hearing the district court referred the complaint for trial to a bankruptcy judge of this district pursuant to then Local Rule 51, now superseded by Local Rule 402 of the United States District Court for the District of Maryland.

Following the receipt of the file from the Clerk of the United States District Court for the District of Maryland, this court scheduled a hearing on January 25, 1989, upon the pending motions to dismiss as well as for a status conference in order to be able to confer with the parties as the expedited processing of the referred complaint. At that time, it was the consensus of counsel that a complaint bearing on the identical allegations be filed in the Circuit Court for Prince George's County, Maryland, inasmuch as that court also had original jurisdiction over the subject matter of the complaint. In the meanwhile, this court would stay further action as to this complaint. Thereafter, plaintiffs filed a civil action in that court that the court is advised embodied the same allegations as the instant complaint. The matter was dismissed

by the Circuit Court upon a plea of limitations leaving the plaintiffs with no choice of forum other than the United States District Court for the District of Maryland, and by reference the United States Bankruptcy Court for the District of Maryland.

One of the three plaintiffs in this eight-count complaint is the debtor, Jean F. Mona. The action is based entirely upon matters arising prior to the filing of her bankruptcy petition on July 10, 1986. A jury trial was timely requested.

Under 28 U.S.C. section 1334 (b) the district courts have original but not exclusive jurisdiction of all civil proceedings such as this related to cases under Title 11. The relationship of this case to Title 11 is that one of the plaintiffs is the debtor, Jean Mona. Should she recover a share of the $16 million claimed, it would have an impact upon her ability to propose a plan susceptible of confirmation. *In re Fietz,* 852 F2d 455, 456-7 (9th Cir. 1988).

Given the decision of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.,* 458 U.S. 50 (1982), the subsequently passed 28 U.S.C. section 157 (c)(1), and the mandate from the district court, this court is to conduct a jury trial

and then submit findings of fact and conclusions of law to the district court so that it may enter a final order and judgment after considering this court's proposed findings and rulings and reviewing *de novo* those matters to which any party has timely and specifically objected. The district court would then rule upon any claim of infringement of Seventh Amendment guarantees.

The Clerk of this court is directed to docket each of the matters filed in the United States District Court for the District of Maryland as if these had been filed initially in this court. All parties are notified that the case shall carry the adversary proceeding number shown on this notice.

* * * * *

There are still pending the two motions to dismiss (D.E. 7 and 8). Notice is thereby given that there will be heard all pending motions to dismiss on JUNE 13, 1990, at 3:30 p.m.

SO ORDERED at Rockville, this 4th day of May, 1990

/s/ PAUL MANNES, Chief Judge
United States Bankruptcy Court
for the District of Maryland

ENTERED: May 4, 1990

cc: Honorable Frank A. Kaufman, Judge
and All Counsel

UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF MARYLAND AT ROCKVILLE

IN RE:	)	
JEAN MONA	)	Case No. 86-4-1658-PM
Debtor	)	Chapter 11
	)	
JEAN F. MONA,	)	
JOSEPH F. MONA	)	
MATTHEW J. KINGHAM	)	
Plaintiffs	)	Civil No. K88-209
vs.	)	
CITIZENS BANK AND	)	Adversary No.
TRUST COMPANY OF	)	90-A-0052-PM
MARYLAND, TICOR	)	
TITLE INSURANCE	)	
COMPANY, DANIEL J.	)	
GILLESPIE, A. LEE	)	
HAISLIP, JR.	)	
Defendants	)	

ORDER DISMISSING PLAINTIFFS' CLAIMS

Upon consideration of the Motions to Dismiss filed by defendants Citizens Bank and Trust Company of Maryland, A. Lee Haislip, Jr., Esq.,

Daniel J. Gillespie, and Ticor Title Insurance Company, and the Oppositions of plaintiffs and Replies of defendants filed thereto, and a hearing having been held on June 13, 1990 (the "Hearing"), and the Court determining to issue a report and recommendation to the United States District Court for the district of Maryland with respect to its decision to abstain from jurisdiction over the claims of the debtor Jean Mona pursuant to 28 U.S.C. section 1334 (b)(2), and upon the findings of fact and conclusions of law set forth by the Court on the record of the Hearing, it is this 26th day of June, 1990, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that ll of the claims of plaintiffs Joseph F. Mona and Matthew J. Kingham be and are hereby dismissed for lack of subject matter jurisdiction in this court.

/s/Paul Mannes,
Chief Bankruptcy Judge

cc: All Counsel

UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF MARYLAND AT ROCKVILLE

IN RE:	)	
JEAN MONA	)	Case No. 86-4-1658-PM
Debtor	)	Chapter 11
	)	
JEAN F. MONA,	)	
JOSEPH F. MONA	)	
MATTHEW J. KINGHAM	)	
Plaintiffs	)	
vs.	)	
CITIZENS BANK AND	)	Adversary No.
TRUST COMPANY OF	)	90A-0052-PM
MARYLAND, TICOR	)	
TITLE INSURANCE	)	
COMPANY, DANIEL J.	)	
GILLESPIE, A. LEE	)	
HAISLIP, JR.	)	
Defendants	)	

REPORT AND RECOMMENDATION OF BANKRUPTCY
JUDGE ON MOTION FOR ABSTENTION

By virtue of the order of the Honorable Frank

A. Kaufman, Senior Judge, entered September 20, 1988, this civil action originally filed in the United States District Court for the District of Maryland was referred to a bankruptcy judge of this district under former Local District Rule 51.

This complaint appears to allege the defendants acted wrongly in frustrating debtor in connection with refinancing of certain property owned by one Marion Fogel and his wife, Wanda Fogel, and Joseph Mona and his then wife, Carol A. Mona. The latter four, in an effort to defeat the claims of creditors holding judgments against Joseph F. Mona, sought to convey the property around those creditors. As carried out, the transaction protected 75% of the property but, because of the alleged malfeasance of the scrivener Haislip, 25% of the property was left in the name of Joseph Mona. Therefore, that fraction was susceptible to the claims of his creditors. The defendants correctly alleged that the averments of fraud were not stated with particularity.

On November 4, 1988, a status conference was noted for January 25, 1989, to deal with all pending matters. The history of the case since that time is set forth in the Order to Clerk on the Processing Referred Case filed May 4, 1990. A

copy of said order is attached as Appendix 1. The matter came on for hearing before the court on June 13. 1990, as to the pending issues. The court entered an order dismissing the claims of the plaintiffs, Joseph F. Mona and Matthew J. Kingham, for lack of jurisdiction. The jurisdictional grant of 28 U.S.C. section 1334 does not grant the court power to adjudicate a dispute between the non-debtor plaintiffs, Joseph F. Mona and Matthew J. Kingham, and any of the defendants.

Plaintiffs' jurisdictional allegations were based upon 28 U.S.C. sections 1331, 1334, and 1409. Section 1409 deals with venue, and section 1331 grants the district court's original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. The instant action is a state law breach of contract or tort case. The only arguable basis of jurisdiction is 28 U.S.C. section 1334 (b) that provides:

> **Section 1334.**
> **Bankruptcy cases and proceedings**
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related

to cases under title 11.

The critical phrase is "related to cases under title 11." In granting the motion to dismiss as to the non-debtor plaintiffs, the court found it inconceivable that the outcome of the claims of Joseph F. Mona and Matthew J. Kingham against these defendants could have had any effect upon the bankruptcy estate of Jean Mona. *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984); *In re Fietz*, 852 F2d 455, 456-458 (9th Cir. 1988). The court has therefore entered an order dismissing the complaint as to plaintiffs, Joseph F. Mona and Matthew J. Kingham.

The court is left with debtor's 30-page complaint, together with a prayer for jury trial. No parties have consented to the entry of a final order or judgment by the bankruptcy judge. Provision for this voluntary consent is contained in the Bankruptcy Rules 7008(a) and 7012(b). Were this court to undertake to try the case, 28 U.S.C. section 157 (c)(1) mandates that the bankruptcy judge submit proposed findings of fact and conclusions of law to the district court. Any final order is to be entered by the district judge after consideration of the bankruptcy judge's proposed findings and conclusions and after

reviewing *de novo* those matters to which any party has timely and specifically objected. That procedure is constitutionally incompatible with a trial by jury.

The bankruptcy court is therefore in a position of having to try a related matter, together with the jury, without the power to enter a final order and with an insurmountable Seventh Amendment conflict. Therefore it is reported and recommended that the reference be withdrawn in *Jean F. (Kingham) Mona v. Citizens Bank and Trust Company of Maryland, Ticor Title Insurance Company, Daniel J. Gillespie, A. Lee Haislip, Jr.*, K88-209 in the United States District Court for the District of Maryland, Adversary No. 90A-0052-PM in the United States Bankruptcy Court for the District of Maryland.

DATE: August 15, 1990

/s/PAUL MANNES, Chief Judge
United States Bankruptcy Court
for the District of Maryland

cc: All Counsel

Jean F. (Kingham) MONA, et al.

v.

CITIZENS BANK AND TRUST COMPANY OF MARYLAND, et al.

Civ. No. K-88-209.

United States District Court, D. Maryland

Aug. 5, 1992

FRANK A. KAUFMAN, Senior District Judge.

In his Report and Recommendation, Judge Paul Mannes of the United States Bankruptcy Court recommended that the referral of the within case, by this Court, to the Bankruptcy Court, be withdrawn. This Court, by an Order dated November 9, 1990, withdrew that reference. This case originally involved claims brought by a bankrupt plaintiff-debtor (Jean Mona) and two other non-debtor plaintiffs against defendants Citizens Bank and Trust Company of Maryland (Citizens Bank), Daniel J. Gillespie (Gillespie), individually and in his capacity as an officer and employee of Citizens Bank, Ticor Title Insurance

Company (Ticor), and A. Lee Haislip (Haislip, individually and an agent for Citizens Bank and Ticor.[1]

At the time this Court referred the within case to the Bankruptcy Court, there were pending before this Court motions to dismiss submitted by all defendants. As one basis for said motions, defendants contended that the case involved non-core matters and that, therefore, this Court was required to abstain under applicable federal law. In the alternative, defendants urged this Court to abstain on a discretionary basis should this Court find that the case involved core matters.

The report of the Bankruptcy Judge, although titled "Report and Recommendation of Bankruptcy Judge on Motion for Abstention," only recommended withdrawal of the reference to the Bankruptcy Court and did not address abstention issues. Therefore, under those circumstances, defendants' various motions to dismiss are pending before this Court.

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1. The seven-count complaint sought, in Count 1, to avoid a debt resulting from judgment on a cognovit note. The remaining counts related to events leading up to the judgment upon the cognovit note and included fraud, breach of contract, breach of fudiciary duty and professional liability.

Defendants have at all times urged the Court to abstain from exercising jurisdiction in this case. Jean Mona,[2] on the other had, asserts that the issues in this case, at least as to those involving herself and the defendants Citizens Bank and Gillespie, are core issues and that therefore this Court is not required to abstain. Further, Jean Mona contends that if any of her claims are non-core, this court should not abstain, noting that she has no other forum available in which to try her contentions.

For the reasons stated *infra*, regardless of whether core or non-core issues are present, this Court will abstain.

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2. As will be addressed in greater detail *infra*, the two non-debtor plaintiffs were dismissed from the case pursuant to an Order issued by Judge Mannes, which Order is referenced in his Report and Recommendations. This Court hereby approves that dismissal. Those non-debtor plaintiffs have not excepted to that ruling by Judge Mannes and thus only Jean Mona's contentions are before this Court. Jean Mona, however, is seemingly pressing in this case all allegations stated by plaintiffs.

I.

This case involves certain property which ultimately came to be owned by Jean Mona, Joseph Mona (Jean's husband), and Matthew Kingham.[3] Some time prior to February 5, 1980, that property had been owned by Joseph Mona and his former wife, as tenants by the entireties, and by two other parties. One of those other parties transferred that party's 25% interest in the property to Joseph Mona by quitclaim deed. That quitclaim deed was not recorded. At some point, Joseph Mona's creditors obtained and recorded judgments against him, individually, in matters unrelated to the property. Apparently because the quitclaim deed was not recorded, Joseph Mona's judgment creditors did not attach his 25% individual ownership interest in the property; presumably, those creditors had no notice of ownership of that interest.

Subsequently, Joseph Mona married Jean Mona. The Monas decided to develop the property and in 1983 sought loans from defendant Citizens Bank's predecessor in interest to do so. Joseph Mona

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3. Joseph Mona and Matthew Kingham were the two non-debtor plaintiffs who filed the Complaint in this case, along with Jean Mona.

and Jean Mona obtained a consolidation loan to pay off an already existing indebtedness to Citizens Bank's predecessor. In addition, they obtained a construction loan to develop the property. The property itself was to serve as collateral for both obligations. Because of their desire to protect that property from Joseph Mona's creditors, Citizens Bank's predecessor and the Monas decided that the property would be owned 100% by Jean Mona, in fee. That is, the tenants by the entireties' share and the remaining shares owned by another party and by Joseph Mona, individually, were to be transferred to Jean Mona. Although the record in this case is not entirely clear, it appears that the 25% interest owned by Joseph Mona individually and then the deed showing 100% ownership in Jean Mona was to be recorded.

Due to an error, the 25% interest in the property owned by Joseph Mona, individually, was recorded--unbeknownst to the Monas. Defendant Haislip, who was at that time an officer of Citizens Bank's predecessor, acted as settlement attorney and title agent. Apparently it was defendant Haislip--or someone acting on his behalf--who recorded Joseph Mona's 25% interest in the

property. The recording of Joseph Mona's 25% interest in the property made it possible for the recorded judgments against Joseph Mona to attach, at least facially, to that property. Subsequently, when the Monas attempted to sell houses which they had constructed upon the property, their efforts were thwarted because they did not have unchallenged clear titles.[4]

In late 1984, Jean Mona conveyed her interest in the property to her son, Matthew Kingham, with the knowledge and consent of the Bank. In early 1985, Joseph and Jean Mona executed a modification agreement pursuant to which the Bank agreed to lend an additional $60,000 for construction. Joseph, Jean and Matthew signed notes for that amount as co-makers. In August

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4. In addition to their title problems, plaintiffs' complaint alleges that Citizens Bank failed to follow the construction schedule which the Bank had developed in arranging the two loans to Joseph Mona and Jean Mona. According to plaintiffs, construction did not start until 15 months after settlement because the Bank did not fund the loan until then. Plaintiffs state that no reason was ever given for the funding delay. In addition, plaintiffs assert that the Bank insisted that it disburse the construction costs, and promised to provide a weekly accounting of these disbursements; however, plaintiffs allege that such accounting was never submitted.

1985, Joseph, Jean and Matthew executed a blank cognovit note as co-makers. Jean Mona alleges that Citizens Bank later entered $100,000 as the amount of the note, without any authorization from her or the other two co-makers.

Jean Mona also contends that Haislip expressed strong interest--to the point of insistence--in acting as settlement attorney for the houses being built on the property; however, the buyer of one of the houses being built used another attorney for settlement. In the course of preparing for settlement, the title defect was discovered, apparently by the buyer's attorney. Joseph Mona was advised of the defect by a real estate agent in late September 1985. Plaintiffs assert that this was the first notice of any title defect that they had received. The buyer was released from the purchase contract in late November 1985.

Jean Mona further claims that during the first week of December 1985, defendant Haislip contacted Joseph Mona and asked that Jean Mona consent to a foreclosure to "solve" the "title problems." Jean Mona alleges that defendant Gillespie also agreed that such a procedure would be beneficial and, according to Jean Mona, Gillespie termed it a "friendly" foreclosure. However, Jean Mona

refused to acquiesce in the foreclosure, and on December 20, 1985, Citizens Bank foreclosed on the property. On June 27, 1986, judgment was entered on the cognovit note against all three makers in favor of the payee, in the amount of $129,370.46, with interest thereon accruing at a rate of $34.20 per day. Jean Mona states that on our about July 10, 1086, as a direct consequence of the judgment on the cognovit note, Jean Mona filed for bankruptcy under Chapter 13, which proceeding was subsequently converted to a Chapter 11 proceeding.

II.

The complaint in this case was filed in this Court on January 26, 1988, by Jean Mona, Joseph Mona and Matthew Kingham. In March of 1988 all of the defendants filed motions to dismiss, asserting *inter alia* that subject matter jurisdiction was not present as to the claims of either Joseph Mona or Matthew Kingham, and that, in addition, abstention by the Court was appropriate.

This Court held a hearing on those motions on September 19, 1988. As a threshold matter, this Court observed during that proceeding that under then Local rule 51,[5] cases such such as this one

are referred automatically to the Bankruptcy Court. Due to a clerical oversight, that referral was not made and plaintiffs' counsel had not notified the Court of that error. After the hearing, this Court did refer this case to the Bankruptcy Court.

During that September 19, 1988 hearing, certain preliminary determinations were made by this Court. Among those determinations were that plaintiffs Joseph Mona and Matthew Kingham could not pursue their claims in this Court because no independent subject matter jurisdiction existed to support their claim; and that plaintiffs' reliance upon a so-called "pendant plaintiff" basis for the grounding of such jurisdiction was without merit. In addition, this Court stated that the appropriate forum for the trial of this case was in a Maryland state court because, but for the presence of the bankrupt, Jean Mona, as plaintiff, state claims predominated and all defendants and all plaintiffs resided in the State of Maryland.

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5. Since renumbered as Local Rule 402.

not pursue their claims in this Court because no independent subject matter jurisdiction existed to support their claim; and that plaintiffs' reliance upon a so-called "pendant plaintiff" basis for the grounding of such jurisdiction was without merit. In addition, this Court stated that the appropriate forum for the trial of this case was in a Maryland state court because, but for the presence of the bankrupt, Jean Mona, as plaintiff, state claims predominated and all defendants and all plaintiffs resided in the State of Maryland.

During the September 19, 1988 proceeding, this Court also referred to the issue of whether this case was core or non-core, but deferred any final determination in that regard because of the upcoming reference to the Bankruptcy Court. Nevertheless, this Court stated that if the within case were properly before this Court at that time, it would exercise its discretion to abstain under section 1334(c)(1) and that thereafter the plaintiffs could proceed in a state court. The Court also noted that the plaintiffs' attack upon the judgment on the cognovit note could not prevail because that judgment was entitled to full faith and credit.

Following referral of this case to the Bankruptcy Court, Judge Mannes met with all

parties, and plaintiffs apparently agreed at that time that they would press their claims in state court. Nevertheless, plaintiffs refused to dismiss the within federal case in the event they were unable to prosecute their claim in state court for any reason. Plaintiffs filed a case--virtually identical to the within case--in the Circuit Court for Prince George's County, Maryland. Defendants, in response in that case, filed motions to dismiss, raising the statute of limitations as a bar.

Judge Rymer, sitting in the Circuit Court for Prince George's County, held that plaintiffs' claim was indeed barred by limitations. Observing that plaintiffs, by their own admission, were on notice at least as early as September 25, 1985 that title defects existed on the property and that plaintiffs could not convey marketable title, Judge Rymer reasoned that such notice would have caused a reasonable person to investigate the defect and to protect his or her interests. In addition, Judge Rymer concluded that plaintiffs had admitted that defendants Haislip and Gillespie contacted them concerning the pending foreclosure in early December 1985, that plaintiffs' property was foreclosed upon on December 20, 1985, but that, nevertheless, plaintiffs did not file a revisory

motion with regard to that foreclosure.

Judge Rymer also concluded that plaintiffs knew that the Bank was behind in its construction funding in November 1984, that plaintiffs were incurring money damages as a result, and that plaintiffs knew in late 1984 and in 1985 that the Bank was not filing weekly accountings of disbursements even though plaintiffs had made repeated requests to receive such accountings. Further, plaintiffs had sought no relief in any court until they instituted the within federal case in January 1988. Just Rymer noted that each of the acts and omissions relied upon by plaintiffs to support their fraud, breech of contract, and breach of fiduciary duty causes of action (as well as others pleaded by them), occurred during the period 1983 to December 1985.

Judge Rymer determined that each of plaintiffs' causes of action was time-barred in the state court case before him which was commenced on April 6, 1989. Judge Rymer--applying Maryland's three-year statute of limitations--stated that plaintiffs' claims were stale at the latest by December 20, 1988. Judge Rymer also commented that plaintiffs' attack upon the money judgment on the cognovit could not succeed because the issues

involved were settled when the December 20, 1985 judgment was entered, that judgment was not timely attacked, and that judgment collaterally estopped plaintiffs from attacking the judgment on the cognovit note. In addition, because Judge Rymer was persuaded that plaintiffs had knowledge of the foreclosure action and the entry of the cognovit note, plaintiffs could not meritoriously assert the existence of the type of extrinsic fraud which might enable them to set aside those judgments.

Plaintiffs appealed from Judge Rymer's aforementioned determinations to the Court of Special Appeals of Maryland, arguing that their filing of the within case in federal court in January 1988--before the running of Maryland's period of limitations--had tolled limitations. The latter court, in an unreported opinion, rejected that argument, observing that Maryland strictly construes its statutes of limitations. *See Mona v. Citizens Bank & Trust Co. of Md.*, No. 86, slip op. at 6 (Md.Ct.Spec.App. Oct. 24, 1990). In so doing, the Court of Special Appeals wrote that "[i]t is now well settled in Maryland that the mere filing of an action in one jurisdiction does not toll the statute of limitations with respect to a second

action, involving the same claim, filed in another jurisdiction." *Id.* slip op. at 5 (citing *Walko Corp. v. burger Chef Sys., Inc.*, 281 Md. 207, 378 A.2d 1100 (1977). Plaintiffs petitioned the Court of Appeals of Maryland for certiorari, which that court granted. However, that court later withdrew that grant as having been improvidently granted, *see Mona v. Citizens Bank & Trust Co. of Md.*, 323 Md. 26, 590 A.2d 548 (1991), and subsequently denied plaintiffs' motion for reconsideration.

III.

Following the adverse decision in the Circuit Court for Prince George's County, plaintiffs returned to the Bankruptcy Court. In a hearing on June 13, 1990, Judge Mannes, after reviewing the history of this case, dismissed the two non-debtor plaintiffs, concluding that there was no subject matter jurisdiction for their complaint. In so doing, Judge Mannes stated that he found it inconceivable that the outcome of the claims of Joseph Mona and Matthew Kingham against defendants could have had any effect upon the bankruptcy estate of Jean Mona, citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir.1984).

Judge Mannes also stated that the whithin case

was a non-core, "related-to" case, with the exception of the claims by Jean Mona against defendant Citizens Bank. The claims against the remaining defendants were deemed to be non-core. Judge Mannes observed that in non-core cases, under *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (per curiam), and absent agreement by all parties, a Bankruptcy Court may only make proposed findings of fact and conclusions of law. Also, Judge Mannes noted that the jury trial elected by plaintiff Jean Mona rendered the Bankruptcy Court unable to handle the case and that "the de novo review [by the District Court] that is part and parcel to the grant of jurisdiction to the Bankruptcy Court is absolutely incompatible with the Seventh Amendment." In sum, Judge Mannes concluded that he would enter and Report and Recommendation that the district court withdraw the reference of the plaintiff's claims.

Judge Mannes further states: "I will likewise report and recommend under Section 1334 (c)(2) [mandatory abstention] that the...District Court abstain from the exercise of jurisdiction." Judge Mannes found that the requirements under Section

1334 (c)(2) is not reviewable by appeal or otherwise, it would be inappropriate for a Bankruptcy Judge to enter such an order and that is why the matter goes up to the District Court as a report and recommendation."

In the Report and Recommendation of the Bankruptcy Judge, Judge Mannes addressed only his dismissal of Joseph Mona's and Matthew Kingham's claims and the constitutional incompatibility of a jury trial with the statutory bankruptcy scheme in which the district court is empowered to undertake *de novo* review of the proposed findings of fact and conclusions of law made by the Bankruptcy Judge. In that regard, Judge Mannes stated on the record during the June 13, 1990 hearing that he would recommend that this Court abstain under Section 1334 (c)(2); however, although the caption of the Report and Recommendation referred to the Motion for Abstention, no such recommendation was included in the text of Judge Mannes' Report and Recommendation. Notwithstanding that omission, none of the defendants filed any timely objection to the said Report and Recommendation.

IV.

[1] Title 28, Section 1334(c)(2) of the United States Code requires this Court to abstain from exercising jurisdiction in the certain actions related to a bankruptcy proceeding but involving state law claims, i.e., non-core claims. That section provides, in relevant part:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain or not to abstain made under this subsection is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. section 1334(c)(2) (Supp. II 1990). "Section 1334 (c)(2) provides for mandatory abstention in those cases where (1) the action is only related to a bankruptcy; (2) the action could not be brought in federal court absent its relatedness to a bankruptcy; and (3) the action can be timely adjudicated in state court." *Allen*

County Bank & Trust Co. v. Valvmatic Int'l Corp., 51 B.R. 578, 583 (N.D.Ind.1985).

All parties agree that plaintiff's claims against defendants other than Citizens Bank, and Gillespie in the latter's capacity as an officer or employee of that Bank, are non-core and that mandatory abstention is appropriate if the requirements for such abstention are met. Jean Mona asserts, however, that because her claims have been determined to be time-barred in the state forum, this Court must retain jurisdiction because it is now the only forum which is available to her. Defendants, in response, assert that the the availability of the state forum should be determined from the circumstances as they existed on the date upon which Jean Mona filed her complaint in this Court, noting that the existence of federal jurisdiction based upon diversity, for example, is determined upon the facts as they existed at the time a complaint is filed. *See, e.g., Mollan v. Torrance*, 22 U.S.(9 Wheat.) 537, 539, 6 L.Ed. 154 (1824) (Marshall,J.) ("It is quite clear, that the jurisdiction of the court depends upon the state of things at the time of the action brought, and that after vesting, it cannot be ousted by subsequent events.")

Defendants candidly admit that they have found no case precisely on point in that regard, nor has this Court found any such case. However, this Court need not, under any circumstances as they exist in this case, look to the facts as they existed in January 1988 when Jean Mona filed her complaint. Rather, this Court can look to all that has occurred before, during and following the hearing held in this Court on September 18, 1988.

During that hearing, this Court advised counsel for Jean Mona in the strongest possible terms that the proper forum for her claims was a Maryland state court, observing that, if the case were, at that time, properly before this Court, this Court would abstain from exercising jurisdiction. Thus, Jean Mona was on notice that this Court did not expect to exercise jurisdiction and that this Court was of the opinion that she and the other plaintiffs should proceed in state court. Those statements were made by this Court in open court upon the record in September 1988, well before the December 1988 date determined by Judge Rymer to be the date upon which the statute of limitations had run.

To permit a plaintiff to forego an available forum until after limitations have run in that

forum and then to raise that lack of an alternative forum as a bar to a federal court abstaining from exercising its jurisdiction on a mandatory or discretionary basis, speaks for itself. By analogy, that is why post-filing changes in the jurisdictional context cannot operate to defeat diversity jurisdiction, for example, by a party's change of domicile subsequent to the filing of a complaint. As stated in *Johnson v. Burken*, 930 F2d 1202, 1205 (7th Cir. 1991), the reason post-filing events do not affect jurisdiction "is that, if they did, this would be an invitation to strategic behavior."

Jean Mona may have believed--as she argued in the Court of Special Appeals of Maryland--that by filing her case in this Court in January 1988, Maryland's statute of limitations had been tolled; however, the Court of Special Appeals of Maryland has determined to the contrary. Jean Mona could easily have protected herself from the effect of such a ruling by filing a state court case while she proceeded before Judge Mannes but she did not do so.

V.

[2] Jean Mona asserts that her claims against

the Bank and defendant Gillespie, in his capacity as an officer and employee of the Bank, are core claims: defendants contend that even those claims are non-core. In the case of core claims, this Court is not required to abstain, but may exercise its discretion to do so. Title 28, Section 1334 (c)(1) provides:

> Nothing in this section prevents a district court in the interest of justice or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

28 U.S.C. section 1334 (c)(1) (1988)

The Bankruptcy Code defines core proceedings only by example. *See* 28 U.S.C. section 157(b)(2) (1988). That section contains a non-exhaustive listing of proceedings affecting the bankrupt estate which are deemed to be core. As one commentator has pointed out:

> When one looks at the list of what is and what is not a core proceeding under the Code, it is clear that, as a general rule: (1) a matter that arises directly in a bankruptcy case under bankruptcy law is a core proceeding, and (2) a matter that arises under nonbankruptcy law and happens to be of issue in a bankruptcy case

> merely because one of the parties to the dispute is the debtor in the bankruptcy case usually is not a core proceeding.

Robert E. Ginsberg, *Bankruptcy* par. 1123, at 1035 (Supp. 1988). Section 157 (b)(2)(B) provides that allowance or disallowance of claims against the estate is a core matter. Likewise, section 157(b)(2)(B) provides that counterclaims by the estate against persons filing claims against the estate are core matters. Defendant Citizens Bank filed two proofs of claim against the estate in the bankruptcy proceeding: one on the cognovit note and the other on the secured bank loans. Jean Mona did not file an objection to those proofs of claim in the bankruptcy court. Instead, she elected to file the instant suit in this Court. Plaintiff's within suit apparently attempts to state a counterclaim by the bankrupt estate against Citizens. In that regard, Jean Mona in Count I of her complaint attacks the validity of the cognovit judgment, alleging that the judgment was fraudulent.

Even if this Court were to determine that any claim or any counterclaim involving the estate of Jean Mona in bankruptcy, Citizens Bank or Gillespie is a core matter, that determination would not afford plaintiff any relief. That is because

the entry of judgment on the cognovit note was a final judgment to which this Court must give full faith and credit, particularly since, as Judge Rymer observed in his Opinions and Order dismissing plaintiff's identical state court suit, plaintiff had notice of the entry of the judgment upon the cognovit note in June 1986 and did not challenge such entry.

VI.

In summary, Jean Mona--and all of plaintiffs--were put on notice by this Court as early as September 18, 1988, that this Court was of the view that plaintiff's claims properly belonged in state court and that this Court expected--regardless of whether plaintiff's claims were core or non-core--to abstain from exercising jurisdiction. Thus, to the extent that all of Jean Mona's claims are deemed to be non-core, with abstention being mandatory, plaintiff is not permitted to obliterate the statute's mandatory abstention prescription by waiting until limitations have run barring a state court action and then pleading the lack of a state forum as a bar to this Court's mandatory abstention. On the other hand, if any of Jean Mona's claims are deemed to be

core, plaintiff cannot be permitted to obliterate this Court's discretion to abstain from exercising jurisdiction by relying upon such a lack of a state forum. Finally, even if plaintiff's claim were to be deemed core and if it were determined that abstention was inappropriate, this Court would be bound to give the judgment of the state court on the cognovit note full faith and credit.

For the reasons stated herein, this Court will enter an Order of even date herewith abstaining from the exercise of its jurisdiction pursuant to the provisions of 28 U.S.C. section 1334(c)(1) and/or section 1334(c)(2) and entering judgment against all plaintiffs and in favor of all defendants without prejudice.

ORDER

This Court hereby abstains from the exercise of such subject matter jurisdiction in this case as may exist, and hereby enters judgment against all plaintiffs and in favor of all defendants, without prejudice. It is so ORDERED, this 5th day of August, 1992.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

November 10, 1992

No. 92-2093

CA-88-209-K

JEAN F. (KINGHAM) MONA

Plaintiff-Appellant

and

JOSEPH F. MONA, MATTHEW J. KINGHAM

Plaintiffs

v.

CITIZENS BANK AND TRUST COMPANY OF MARYLAND; A. LEE HAISLIP, JR., Esquire, as agent of Peoples Security Bank of Maryland and Citizens Bank and Trust Company of Maryland and as agent of Ticor Title Insurance Company; A. LEE HAISLIP, JR., Esquire; DANIEL J. GILLESPIE, Individually, and as Employee or Officer of Citizens Bank and Trust Company of Maryland; TICOR TITLE INSURANCE COMPANY

Defendants - Appellees

ORDER

Appellees have filed a motion to dismiss the appeal and appellant has filed a response thereto.

The Court grants the motion to dismiss.

FOR THE COURT

/s/Bert M. Montague

CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 18, 1992

No. 92-2093
CA-88-209-K

JEAN F. (KINGHAM) MONA
Plaintiff-Appellant

and

JOSEPH F. MONA, MATTHEW J. KINGHAM
Plaintiffs

v.

CITIZENS BANK AND TRUST COMPANY OF MARYLAND; A. LEE HAISLIP, JR., Esquire, as agent of Peoples Security Bank of Maryland and Citizens Bank and Trust Company of Maryland and as agent of Ticor Title Insurance Company; A. LEE HAISLIP, JR., Esquire; DANIEL J. GILLESPIE, Individually, and as Employee or Officer of Citizens Bank and Trust Company of Maryland: TICOR TITLE INSURANCE COMPANY
Defendants - Appellees

CORRECTED ORDER

Appellees have filed motions to dismiss the appeal and appellant has filed responses thereto.

The Court grants the motions to dismiss.

FOR THE COURT

/s/Bert M. Montague

CLERK